

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

RUBEN ESCANO,

Plaintiff,

v.

Civ. No. 22-360 DHU/GJF

RCI, LLC, *et al.*,

Defendants.

ORDER

THIS MATTER is before the Court pursuant to a March 5, 2024 e-mail to the Court from counsel for Defendant RCI requesting the Court's assistance, pursuant to Comment 7 to Rule 16-402 of the New Mexico Rules of Professional Conduct, in determining whether counsel for Defendants could continue to communicate directly with Plaintiff as to matters related to this case. That e-mail to the Court followed a March 4, 2024 letter from *pro se* Plaintiff to counsel for Defendants in which Plaintiff advised:

I am writing to inform you that I have consulted with legal counsel regarding the subject line case. And in accordance with N.M. Stat Ann. § 57-12-10(C), I will request that the Court order the Defendants to reimburse me for attorney fees and costs incurred during this litigation. Until further notice, you can continue to communicate with me directly.

Rule 16-402 provides that “[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” Comment 7, in turn, directs that “[a] lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order.” NMRA 16-402 cmt. 7.

To resolve whether counsel for Defendants could continue to communicate directly with

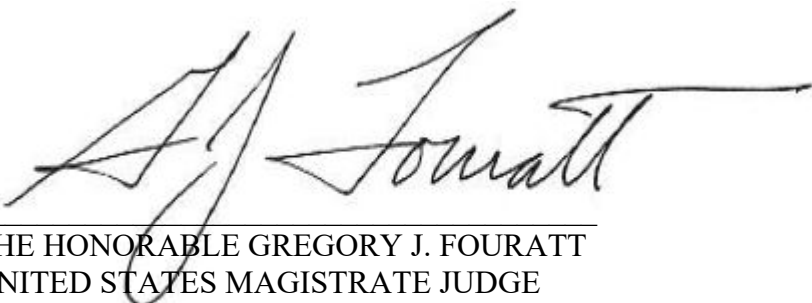
Plaintiff, the Court held a telephonic conference on March 7, 2024. *See* ECF 193 (Clerk's Minutes).

For the reasons stated on the record at the conference, the Court **FINDS AND CONCLUDES** that Plaintiff is not "represented by counsel" as that phrase is understood in Rule 16-402.

IT IS THEREFORE ORDERED that Defendants' counsel may continue to have direct communications with Plaintiff regarding this case without violating Rule 16-402.

IT IS FURTHER ORDERED that if Plaintiff decides to retain legal counsel to represent him in this case, he should promptly notify counsel for Defendants and this Court.

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE